

# **Banking, Commerce and Insurance Committee**

**One Hundred First Legislature  
Second Session – 2010**

## **SUMMARY OF 2010 LEGISLATION**

*Committee Members*

**Senator Rich Pahls, *Chairperson***

**Senator Pete Pirsch, *Vice Chairperson***

**Senator Mark Christensen**

**Senator Mike Gloor**

**Senator Chris Langemeier**

**Senator Beau McCoy**

**Senator Dave Pankonin**

**Senator Dennis Utter**

*Committee Staff:*

**William Marienau, *Committee Counsel***

**Janice Foster, *Committee Clerk***

## MEMORANDUM

TO: Members of the Legislature and  
Other Interested Persons

FROM: Senator Rich Pahls, Chairperson  
Banking, Commerce and Insurance Committee

DATE: May 12, 2010

RE: Summary of 2010 Session Legislation

I am pleased to present, for your reference, the following summary of the provisions and disposition of all carried-over 2009 bills and 2010 bills referenced to and considered by the Banking, Commerce and Insurance Committee.

I hope you find this summary helpful as you review our work as of the conclusion of the 2010 session. If you have questions or need additional information, please contact me or our committee staff: Bill Marienau, Legal Counsel, and Janice Foster, Committee Clerk.

# TABLE OF CONTENTS

## LEGISLATIVE BILLS.....PAGE

### BANKING AND FINANCE

LB 88 (Pahls, McCoy) Change provisions relating to unauthorized use of the word bank.....	1
LB 297 (Dubas) Adopt the Nebraska Beginning Farmer and Small Business Linked Deposit Loan Act .....	1
LB 752 (Pahls, Pirsch) Change provisions relating to securities pledged by trust companies.....	3
LB 762e (Pahls, McCoy) Change provisions relating to the unauthorized use of the word bank.....	4
LB 890e (Pahls, Pirsch) Change banking and finance provisions.....	4
LB 891e (Pahls, Pirsch) Provide for conditional bank charters.....	7

### SECURITIES

LB 814 (Gloor, Dubas, Fulton, Hadley, Pahls, Sullivan, Utter) Change provisions relating to transactions exempt from securities registration.....	9
---	---

### PROFESSIONAL CORPORATIONS

LB 759 (Wightman) Provide for the dissolution, winding up, and liquidation of certain professional corporations.....	10
--	----

### LIMITED LIABILITY COMPANIES

LB 730 (Lautenbaugh) Change provisions relating to charging orders and interests in limited liability companies.....	11
LB 888 (Conrad) Adopt the Nebraska Uniform Limited Liability Company Act and change provisions relating to charging orders.....	11
LB 888A (Conrad) Appropriation Bill.....	14

### PRINCIPAL AND INCOME

LB 760 (Wightman) Change provisions relating to total return trusts.....	15
--	----

### TRUSTS

LB 1083 (Dierks) Change provisions relating to contents of a certification of trust.....	16
--	----

**LEGISLATIVE BILLS.....PAGE**

**INSURANCE**

LB 149 (Pankonin, McCoy, Nelson, Pirsch) Require insurance coverage for prosthetics as prescribed.....17

LB 176 (Lathrop) Prohibit use of credit information for insurance purposes and repeal the model act.....17

LB 378 (Gloor, Howard) Require insurance coverage of medical clinical trials.....18

LB 493 (Karpisek) Require insurance coverage for cochlear implants.....18

LB 637 (Mello) Require disclosure of information by certain group health carriers.....18

LB 693 (Price, McCoy) Provide authorization for foreign insurers to offer health insurance in Nebraska.....19

LB 807 (McCoy) Require automobile liability policies to be issued for a minimum term.....20

LB 813 (Gloor) Prohibit prepaid dental service plans from limiting fees for certain services.....20

LB 912 (Pahls, Langemeier) Prohibit occupant recovery limits in uninsured and underinsured motorist coverage.....20

LB 959 (Lathrop, Council) Prohibit certain discriminatory acts or practices related to the business of insurance.....21

LB 1017 (Cornett) Provide requirements for insurers for prescription drug coverage.....21

LB 1088 (Cornett) Adopt the Physicians and Patient Prescription Protection Act.....22

**INTEREST, LOANS, AND DEBT**

LB 431 (McGill) Change Delayed Deposit Services Licensing Act provisions.....24

LB 892e (Pahls, Pirsch) Change provisions relating to federal deposit insurance requirements, residential mortgage licensing, installment loans, and reverse mortgages.....26

**REAL PROPERTY**

LB 736e (Pirsch) Provide for liens for assessments and fines by homeowners' associations.....29

**LEGISLATIVE BILLS.....PAGE**

LB 738e (McCoy) Change provisions relating to the substitution of trustee under the Nebraska Trust Deeds Act.....29

LB 818 (Sullivan, Utter) Change the Real Property Appraiser Act.....30

LB 931e (Sullivan, Utter) Change and Eliminate Provisions of the Real Property Appraiser Act and the Nebraska Real Estate License Act.....30

LB 1051e (Christensen) Change provisions relating to certificate terms, fees, and rosters of abstracters.....36

**PUBLIC FUNDS DEPOSITS**

LB 428 (Christensen) Authorize deposit of public funds in credit unions and clarify Federal Deposit Insurance Corporation and National Credit Union Administration coverage.....38

**REAL ESTATE LICENSEES**

LB 691 (Langemeier) Provide for issuance of cease and desist orders under the Nebraska Real Estate License Act.....39

**ECONOMIC DEVELOPMENT**

LB 657 (Harms) Change the Microenterprise Development Act.....40

LB 1068 (Hansen) Adopt the Rural Tourism Development Act.....41

LB 1074 (Mello, Conrad) Provide for job training grants to film production companies.....43

**TRADE NAMES**

LB 690 (Langemeier) Change deadline provisions relating to trade name publication filings.....44

**TRADE PRACTICES**

LB 571 (Pahls, Lathrop) Adopt the Guaranteed Asset Protection Waiver Act.....45

LB 720 (Avery) Provide requirements and restrictions for customer loyalty or incentive programs.....46

**UNIFORM COMMERCIAL CODE-SECURED TRANSACTIONS**

LB 751e (Pahls, Langemeier) Change provisions relating to the effect of errors and omissions in financing statements.....48

**MISCELLANEOUS INFORMATION**

Bill Status Report.....a

Interim Study Resolutions.....e

Prioritizing of Interim Study Resolutions.....f

## **BANKING AND FINANCE**

### **LB 88 (Pahls, McCoy) Change provisions relating to unauthorized use of the word bank**

#### **Left on Select File**

This bill would amend section 8-113 of the Nebraska Banking Act, which currently provides that no individual, firm, company, corporation, or association, other than a bank, building and loan association, savings and loan association, or savings bank, shall use the word "bank" or any derivative thereof as any part of a title or description of any business activity. Section 8-113 contains a list of entities to which this prohibition does not apply, including organizations which are described in section 501(c)(3) of the Internal Revenue Code. The bill would narrow this section 501(c)(3) exception to food banks and blood banks.

NOTE: Section 8-113 was also amended by LB 762e and enacted.

### **LB 297 (Dubas) Adopt the Nebraska Beginning Farmer and Small Business Linked Deposit Loan Act**

#### **Failed to advance from Select File**

#### **OVERVIEW**

This bill would enact the Nebraska Beginning Farmer and Small Business Linked Deposit Loan Act to create a linked deposit loan program, administered by the State Treasurer, for the purpose of providing linked deposit loans of funds available for investment by the state investment officer to eligible beginning farmers and eligible small businesses. The bill, as amended, would provide that no single linked deposit loan shall exceed two hundred fifty thousand dollars and the total aggregate amount of linked deposit loans shall not exceed two million dollars in FY2011-12 and four million dollars in FY2012-13 and in FY2013-14.

#### **SUMMARY**

The bill, as amended on General File and Select File, would provide, section by section, as follows:

Section 1 would enact a new section to provide for a named act: the Nebraska Beginning Farmer and Small Business Linked Deposit Loan Act.

Section 2 would enact a new section to provide definitions for "eligible beginning farmer" (a beginning farmer or livestock producer who is a resident individual, who has entered or is seeking entry into farming or livestock production, who intends to farm or raise crops or livestock on land within Nebraska, and who meets eligibility guidelines

established in section 3 of the bill), "eligible lending institution," "eligible small business" (an individual or business entity headquartered in Nebraska that employs fewer than ten employees doing business in a municipality, county, unincorporated area, or census tract in Nebraska that has an unemployment rate which exceeds the statewide average, a per capita income below the statewide average, or had a population decrease between the two most recent federal decennial censuses), "linked deposit," and "linked deposit loan package."

Section 3 would enact a new section to provide that an eligible beginning farmer shall be an individual who, along with spouse and dependents, has a net worth of not more than five hundred thousand dollars, provides the majority of the day-to-day physical labor and management, has adequate experience or knowledge, demonstrates a profit potential, and demonstrates a need for assistance.

Section 4 would enact a new section to provide that the State Treasurer is authorized to administer a linked deposit loan program for the purpose of providing incentives for making loans from linked deposits, through eligible lending institutions, to eligible beginning farmers and eligible small businesses. This section would provide that the State Treasurer shall submit an annual report on the program to the Governor and the Legislature.

Section 5 would enact a new section to provide that a linked deposit loan application shall be completed by an eligible beginning farmer or eligible small business and returned to the State Treasurer who shall forward the application to an eligible lending institution for consideration subject to its usual and prudent lending standards and practices to determine credit worthiness. This section would provide that no single linked deposit loan shall exceed two hundred fifty thousand dollars and the total aggregate amount of linked deposit loans shall not exceed two million dollars in FY2011-12, four million dollars in FY2012-13, and four million dollars in FY2013-14.

Sections 6 and 7 would enact new sections to provide that only one eligible linked deposit loan shall be made at any one time to any eligible beginning farmer or eligible small business. These sections would provide that no eligible linked deposit loan shall be extended for more than five years or amortized for greater than fifteen years. These sections would provide that a linked deposit loan shall be used exclusively for: inventory; rent, utilities, insurance, or taxes; equipment purchase, rental, or lease; renovations, repairs, and maintenance of equipment and facilities; or purchase of land and buildings.

Section 8 would enact a new section to provide that an eligible lending institution shall forward an approved linked deposit loan application to the State Treasurer for his or her final approval.

Section 9 would enact a new section to provide that the State Treasurer shall certify to the state investment officer the amount required for an approved linked deposit loan and the state investment officer shall place a linked deposit in the amount certified by the State Treasurer with the eligible lending institution at an interest rate two percent below the

judgment interest rate provided in section 45-103 (the judgment rate in section 45-103 is two percent above the T-bill rate). This section would provide that such interest rate shall be recalculated on the first business day of January, April, July, and October. This section would require that such interest rate shall not fall below zero percent. This section would require that an eligible lending institution shall enter into a linked deposit loan agreement with the State Treasurer which shall include a requirement that the eligible lending institution shall make a linked deposit loan at an interest rate not more than two percent above the judgment interest rate provided in section 45-103. This section would provide that such interest rate shall be recalculated on the first business day of January, April, July, and October.

Section 10 would enact a new section to provide that the State Treasurer may adopt and promulgate rules and regulations to implement the act.

Section 11 would enact a new section to provide that the state or the State Treasurer shall not be liable to any eligible lending institution for payment of the principal or interest on a linked deposit loan. This section would provide that any delay in payments or default on a linked deposit loan shall not affect the linked deposit loan agreement between an eligible lending institution and the State Treasurer.

Section 12 would enact a new section to provide that no new eligible linked deposit loan shall be made after June 30, 2014.

Section 13 would provide that the act becomes operative on July 1, 2011.

## **LB 752 (Pahls, Pirsch) Change provisions relating to securities pledged by trust companies**

### **Left in Committee**

This bill would amend section 8-210 of the Nebraska Trust Company Act to provide that the approved securities which a trust company must pledge with the Department of Banking and Finance may include certificates of deposit. The bill would provide that a trust company which pledges certificates of deposit shall not assign, withdraw, or redeem them without substituting other securities of equal value in lieu of the certificates of deposit so assigned, withdrawn, or redeemed.

The bill carries the emergency clause.

NOTE: LR 438 (Pahls) calls on the Banking, Commerce and Insurance Committee to conduct an interim study to examine issues raised during consideration of LB 752.

**LB 762e (Pahls, McCoy) Change provisions relating to the unauthorized use of the word bank**

**Enacted**

**Effective March 4, 2010**

This bill amends section 8-113 of the Nebraska Banking Act which provides that no individual, firm, company or corporation, or association, other than a bank, building and loan association, savings and loan association, or savings bank, shall use the word "bank" or any derivative thereof as any part of a title or description of any business activity. Section 8-113 also contains an exclusive list of entities to which this prohibition does not apply.

The bill also provides that the prohibition will continue to not apply to section 501(c)(3) organizations, but only as long as they are not providing or arranging for financial services subject to the authority of the Department of Banking and Finance, a foreign state agency, or the federal government.

The bill also provides, as a general rule, that the prohibition does not apply to an individual, firm, company, corporation, or association which uses the word "bank" or any derivative thereof as any part of a title or description of any business activity if such use is unlikely to (1) mislead or confuse the public or (2) give the impression that such individual, firm, company, corporation, or association is lawfully organized and operating as a bank, building and loan association, savings and loan association, or savings bank.

The bill passed 47-0-2 on February 25, 2010 with the emergency clause and was signed by the Governor on March 3, 2010.

**LB 890e (Pahls, Pirsch) Change banking and finance provisions**

**Enacted**

**Operative March 4, 2010 (effective date of the bill), except sections 1 to 5, 7, 9 to 13, and 16 become operative on July 15, 2010 (three calendar months after adjournment of the legislative session)**

This bill, introduced at the request of the Director of Banking and Finance, amends various sections regarding banking and finance. The bill provides, section by section, as follows:

**BANKING**

Section 1 amends section 8-115.01 of the Nebraska Banking Act to modify the requirement that the Department of Banking and Finance provide notice of the filing of a bank charter application to all other financial institutions located in the county where the main office of

the charter would be located, by allowing financial institutions which have more than one office in the county or a main office in another county to designate one office where the notices are to be sent.

Section 2 amends section 8-142 of the Nebraska Banking Act to provide for increased penalties for violations of the bank lending limit contained in section 8-141. Section 8-142 had provided that violations of the lending limit were simply a Class IV misdemeanor. This bill repeals the Class IV misdemeanor penalty and replaces it with a four-tiered system with penalties ranging from a Class III misdemeanor to a Class IV felony scaled to the loss which the bank incurs or the amount by which the violation exceeds the lending limit.

Section 3 amends section 8-143 of the Nebraska Banking Act to update language relating to persons who can be held responsible for violations of the lending limit.

Section 4 amends section 8-157 of the Nebraska Banking Act to modify the requirement that the Department of Banking and Finance provide notice of the filing of a bank branch application to all other financial institutions located in the county where the branch would be located, by allowing financial institutions which have more than one office in the county or a main office in another county to designate one office where the notices are to be sent.

Section 5 amends section 8-183.04 of the Nebraska Banking Act to provide that the calculation and type of capital necessary for mutual banks shall be the same as required for federal mutual savings associations under 12 CFR part 567, unless the Department of Banking and Finance determines the capital is impaired. If impaired, the department may require the members to make up the capital impairment.

Section 6 amends section 8-1,140 of the Nebraska Banking Act, which is the "wild-card" statute for state-chartered banks. This section is amended to give state-chartered banks the same rights, powers, privileges, benefits, and immunities which may be exercised by a federally chartered bank doing business in Nebraska as of January 1, 2010. Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

#### TRUST COMPANIES

Section 7 amends section 8-234 of the Nebraska Trust Company Act to modify the requirement that the Department of Banking and Finance provide notice of the filing of a branch trust office application to all other financial institutions located in the county where the branch trust office would be located, by allowing financial institutions which have more than one office in the county or a main office in another county to designate one office where the notices are to be sent.

#### BUILDING AND LOAN ASSOCIATIONS

Section 8 amends section 8-355, which is the "wild-card" statute for state-chartered building and loan associations. This section is amended to give state-chartered building and loan associations the same rights, powers, privileges, benefits, and immunities which may be exercised by a federal savings and loan association doing business in Nebraska as of January

1, 2010. Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

Section 9 amends section 8-374 to provide that the Department of Banking and Finance shall send notice of an application for a certificate of approval of a stock savings and loan association to all financial institutions in the county where the main office of the association would be located by first-class mail or electronic mail if the financial institution agrees to electronic notices and to allow financial institutions which have more than one office in the county or a main office in another county to designate one office where the notices are to be sent.

#### HOLDING COMPANIES

Section 10 amends section 8-908 of the Nebraska Banking Holding Company Act of 1995 to provide that new section 11 of the bill shall be assigned within the act.

Section 11 enacts a new section in the Nebraska Bank Holding Company Act of 1995 to provide the Department of Banking and Finance with the authority to take corrective administrative action when a bank holding company's officer or director is engaging in acts detrimental to the bank holding company or a subsidiary bank. Corrective action includes, but is not be limited to, removal of such persons from their positions and imposition of fines.

#### ACQUISITIONS OR MERGER OF FINANCIAL INSTITUTIONS

Section 12 amends section 8-1502 to provide an exception to the requirement that the prior approval of the Department of Banking and Finance is required for a change of control of banks and trust companies for situations where individual owners create a trust for estate planning purposes if: the trust holds shares for the individual(s) in the same proportion as the individual(s) previously held it; control remains with the same individual(s); and prior notice is given to the department.

#### CREDIT UNIONS

Section 13 amends section 21-1725.01 of the Credit Union Act to provide that any notices related to credit union applications that the Department of Banking and Finance is required to send to other financial institutions in an affected county shall be sent by first class mail, rather than certified mail, and to allow financial institutions which have more than one office in the county or a main office in another county to designate one office where the notices are to be sent.

Section 14 amends section 21-17,115 of the Credit Union Act, which is the "wild-card" statute for state-chartered credit unions. This section is amended to give state-chartered credit unions the same rights, powers, privileges, benefits, and immunities which may be exercised by a federal credit union doing business in Nebraska as of January 1, 2010. Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

#### MISCELLANEOUS PROVISIONS

Sections 15 provides for operative dates. Sections 1 to 5, 7, 9 to 13, and 16 become operative on July 15, 2010 (three calendar months after adjournment of the legislative session) and

sections 6, 8, 14, 15, and 17 become operative on March 4, 2010 (the effective date of the bill).

Section 16 provides for repealers of the amendatory sections not subject to the emergency clause.

Section 17 provides for repealers of the amendatory sections subject to the emergency clause (the wild-card sections).

Section 18 provides for the emergency clause.

The bill passed 47-0-2 on February 25, 2010 with the emergency clause and was signed by the Governor on March 3, 2010.

## **LB 891e (Pahls, Pirsch) Provide for conditional bank charters**

### **Enacted**

### **Effective March 4, 2010**

#### **OVERVIEW**

This bill, introduced at the request of the Director of Banking and Finance, provides for a conditional state bank charter that could be used to acquire a financial institution that has been determined to be failing or troubled by its primary state or federal regulator.

#### **SUMMARY**

The bill provides, section by section, as follows:

Section 1 amends section 8-101.01 of the Nebraska Banking Act to provide that new section 2 of the bill shall be assigned within the act.

Section 2 enacts a new section in the Nebraska Banking Act, with provisions, as follows:

Subdivision (1)(a) authorizes the Director of Banking and Finance to grant a conditional state bank charter that may be inactive for a period of up to eighteen months.

Subdivision (1)(b) provides that a conditional bank charter is limited to the acquisition of troubled or failing financial institutions which are located in Nebraska or which operate a branch office in Nebraska.

Subsection (2) requires the submission of an application to the Department of Banking and Finance that includes draft articles of incorporation, complete biographical and financial information about the proposed stockholders, officers, and directors of the proposed bank, the source and amounts of available capital, and a preliminary business plan that discusses the operations of the proposed bank.

Subsection (3) authorizes the Director of Banking and Finance to hold a public hearing on the application, and provides publication, notice, and scheduling standards for the hearing.

Subsection (4) provides publication and notice standards if the Director of Banking and Finance determines a hearing on the application is not necessary, and requires a hearing if the director receives a substantive objection to the application.

Subsection (5) requires that an applicant for a conditional bank charter pay the costs of any publication and mailing.

Subsection (6) provides that the Department of Banking and Finance must determine that the proposed officers, directors, and shareholders for the conditional bank are persons of integrity and responsibility, that sufficient capital is available for the bank, and that the business plan shows a reasonable probability of usefulness and success, before it grants a conditional bank charter.

Subsection (7) provides the requirements for conversion to a full bank charter. These include obtaining a bond and FDIC insurance; paying in capital and surplus; and paying the charter fees. These are all current requirements in the Nebraska Banking Act for a full bank charter.

Subsection (8) allows the Department of Banking and Finance to issue successive one-year extensions of the initial eighteen-month charter period. The holder of the charter will be required to show that the requirements of subsection (6) of this section continue to be met and pay a fee.

Subsection (9) provides that the Department of Banking and Finance shall issue a notice of expiration of the conditional charter if the holder of the charter has not requested an extension or the department has denied a request for an extension.

Section 3 amends section 8-602 to provide for a conditional bank charter application fee of two thousand five hundred dollars and an extension request fee of one thousand dollars.

Section 4 provides for repealers of the amendatory sections.

Section 5 provides for the emergency clause.

The bill passed 47-0-2 on February 25, 2010 with the emergency clause and was signed by the Governor on March 3, 2010.

## SECURITIES

### **LB 814 (Gloor, Dubas, Fulton, Hadley, Pahls, Sullivan, Utter) Change provisions relating to transactions exempt from securities registration**

**Enacted**

**Effective July 15, 2010**

This bill amends subdivision (9) of section 8-1111 of the Securities Act of Nebraska which provides an exemption from registration for certain transactions pursuant to an offering in which sales are made to not more than fifteen persons. The bill provides that if a seller makes such sales for five consecutive twelve-month periods or makes sales of at least one million dollars from such an offering or offerings, the seller shall file with the Director of Banking and Finance audited financial statements and a sales report which lists the names and addresses of all purchasers and holders of the seller's securities and the amount of securities held by such persons. The bill further provides that, subsequently, such seller shall file audited financial statements and sales reports each time an additional one million dollars in securities is sold or after the elapse of each additional sixty-month period during which such sales are made.

The bill passed 47-0-2 on February 25, 2010 and was signed by the Governor on March 3, 2010.

## **PROFESSIONAL CORPORATIONS**

**LB 759 (Wightman) Provide for the dissolution, winding up, and liquidation of certain professional corporations**

**Enacted**

**Effective July 15, 2010**

This bill amends section 21-2212 of the Nebraska Professional Corporation Act to provide that upon the death or disqualification of the last remaining shareholder of a professional corporation, a successor in interest may dissolve the professional corporation and wind up and liquidate its business and affairs even though the successor in interest could not have become a shareholder of the professional corporation.

The bill passed 47-0-2 on April 9, 2010 and was signed by the Governor on April 12, 2010.

## **LIMITED LIABILITY COMPANIES**

### **LB 730 (Lautenbaugh) Change provisions relating to charging orders and interests in limited liability companies**

#### **Left on General File**

#### **Modified provisions amended into LB 888 and Enacted**

This bill would amend section 21-2654 of the Limited Liability Company Act to provide that a court may appoint a receiver of the distribution subject to a charging order and make all other orders necessary to give effect to the charging order.

The bill would further provide that upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. Before completion of the foreclosure sale, (1) the member or transferee whose transferable interest is subject to the charging order may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court or (2) a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the amount due and thereby succeed to the rights of the judgment creditor, including the charging order.

The bill carries the emergency clause.

#### **EXPLANATION OF COMMITTEE AMENDMENTS**

The committee amendments (AM1749) would amend the bill so it would amend section 21-2654 of the Limited Liability Company Act to more closely reflect the provisions of Section 503 of the Revised Uniform Limited Company Act as promulgated and recommended to the states for adoption by the National Conference of Commissioners on Uniform State Laws in 2006.

The committee amendments would more clearly state that this section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment debtor's transferable interest.

The committee amendments would eliminate existing provisions regarding third party liability and proposed provisions regarding single-member limited liability companies.

### **LB 888 (Conrad) Adopt the Nebraska Uniform Limited Liability Company Act and change provisions relating to charging orders**

#### **Committee Priority Bill (Banking, Commerce and Insurance Committee)**

## **Enacted**

### **Contains modified provisions of LB 730**

#### **Operative January 1, 2011**

This bill enacts the Nebraska Uniform Limited Liability Company Act based on the Revised Uniform Limited Liability Company Act (Re-ULLCA) as promulgated by the National Conference of Commissioners on Uniform State Laws and recommended to the states in 2006.

The bill terminates Nebraska's current Limited Liability Company Act, Neb. Rev. Stat. Secs. 21-2601 to 21-2654 as of January 1, 2013.

Re-ULLCA provides states with modern, updated legislation governing the formation and operation of limited liability companies. A limited liability company is a single business entity which provides limited liability protection for the partners, as well as providing all the owners of the business with federal partnership taxation. Re-ULLCA's noteworthy new aspects expand the parties' freedom through their operating agreement to state the rules that will govern their relationship and the conduct of the business; clarify the duties of loyalty and care that members owe the company and one another and their ability to define and limit those duties; provide for perpetual duration of the company, like a corporation, and generally leave to contract the rights of parties who want to leave the company; and preserve the distinction between manager-managed and member-managed companies while giving new attention to the authority of members to bind the company. Re-ULLCA includes numerous other revisions that represent practical improvements or focus on developments of the last decade.

The bill contains the following parts:

Part 1 (Re-ULLCA Sections 101 to 116) contains general provisions, including definitions; sections on a limited liability company's duration, purposes, powers, name, and agent for service of process; and key provisions concerning the operating agreement. (Sections 1 to 16 of the bill.)

Part 2 (Re-ULLCA Sections 201 to 209) provides for the formation of limited liability companies and for the public filing of records pertaining to a limited liability company. (Sections 17 to 25 of the bill.)

Part 3 (Re-ULLCA Sections 301 to 304) governs the relations of members and managers to third parties i.e., with non-members dealing with or affected by the limited liability company. (Sections 26 to 29 of the bill.)

Part 4 (Re-ULLCA Sections 401 to 410) states the default rules for the members' relationship inter se and with the limited liability company and provides templates for member-management and manager-management. (Sections 30 to 39 of the bill.)

Part 5 (Re-ULLCA Sections 501 to 504) implements the "pick your partner" principle, which is at the core of the law of unincorporated business organizations, and delimits the rights of transferees. (Sections 40 to 43 of the bill.)

Part 6 (Re-ULLCA Sections 601 to 603) states the causes and consequences of a person's dissociation as a member of a limited liability company. (Sections 44 to 46 of the bill.)

Part 7 (Re-ULLCA Sections 701 to 708) delineates the causes and consequences of the dissolution of a limited liability company. (Sections 47 to 54 of the bill.)

Part 8 (Re-ULLCA Sections 801 to 809) governs foreign limited liability companies. (Sections 55 to 63 of the bill.)

Part 9 (Re-ULLCA Sections 901 to 906) provides for direct and derivative claims by members and for the establishment, conduct, and judicial review of special litigation committees. (Sections 64 to 69 of the bill.)

Part 10 (Re-ULLCA Sections 1001 to 1015) governs organic transactions, mergers, conversions, and domestications. (Sections 70 to 84 of the bill.)

Part 11 (non-uniform sections) governs professional limited liability companies with provisions based on existing sections 21-2631 to 21-2632.01 and 21-2646. (Sections 85 to 93 of the bill.)

Part 12 (Re-ULLCA Sections 1101 to 1104 and non-uniform sections) contains miscellaneous provisions, including a section providing transition rules for pre-existing limited liability companies. Limited liability companies formed on or after January 1, 2011 will be subject to the new act. Limited liability companies formed before January 1, 2011 may elect to become subject to the new act on or after January 1, 2011. All limited liability companies will be subject to the new act on and after January 1, 2013. (Sections 94 to 97 of the bill.)

The bill amends various sections outside the Limited Liability Company Act to harmonize provisions. (Sections 98 and 101 to 105 of the bill.)

The bill amends section 21-2601 of the current Limited Liability Company Act to provide that the current act terminates on January 1, 2013. (Section 99 of the bill.)

The bill amends section 21-2654 of the current Limited Liability Company Act so that its provisions, which relate to changing orders, more closely reflect the provisions of Re-ULLCA Section 503 contained in section 42 of the bill. (Provisions of LB 730 left on General File.) (Section 100 of the bill.)

The bill provides that it becomes operative on January 1, 2011. (Section 106 of the bill.)

The bill provides for severability. (Section 107 of the bill.)

The bill provides for repealers of the amendatory sections. (Section 108 of the bill.)

The bill passed 49-0-0 on March 26, 2010 and was signed by the Governor on April 1, 2010.

**LB 888A (Conrad) Appropriation Bill**

**Enacted**

**Effective July 15, 2010**

This bill appropriates \$16,440 from the Corporation Cash Fund for FY2010-11 to the Secretary of State to aid in carrying out LB 888.

The bill passed 49-0-0 on March 26, 2010 and was signed by the Governor April 1, 2010.

## PRINCIPAL AND INCOME

### **LB 760 (Wightman) Change provisions relating to total return trusts**

**Enacted**

**Effective July 15, 2010**

This bill amends section 30-3119.01 of the Uniform Principal and Income Act to provide that in the case of a trust for which a marital deduction has been taken for federal tax purposes, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion, during the spouse's lifetime, of the trust from a total return trust to an income trust.

The bill passed 48-0-1 on April 9, 2010 and was signed by the Governor on April 12, 2010.

## TRUSTS

### **LB 1083 (Dierks) Change provisions relating to contents of a certification of trust**

#### **Left in Committee**

This bill would amend section 30-38,103 of the Nebraska Uniform Trust Code to repeal provisions which allow a certification of trust to include the identifying number of the trust and whether it is a social security number or an employer identification number.

## INSURANCE

### **LB 149 (Pankonin, McCoy, Nelson, Pirsch) Require insurance coverage for prosthetics as prescribed**

#### **Left in Committee**

This bill would enact a new section to provide that any individual or group sickness and accident insurance policy, certificate, or subscriber contract and any self-funded employee benefit plan to the extent not preempted by federal law shall include coverage for prosthetics that, at a minimum, equals the coverage provided under Medicare.

The bill would provide that such coverage may be limited to the most appropriate prosthetic deemed medically necessary by the treating physician, including repair or replacement. The bill would provide that a policy may require that prosthetics be furnished by a prosthetist with which the insurer has a contract, but the covered person shall have access to medically necessary clinical care, prosthetic services, and prosthetic components or technology from a nonparticipating prosthetist to the same extent the policy provides for out-of-network services for other covered benefits.

The bill would provide that it does not prevent application of deductible or copay provisions. The bill would provide that any copayment shall not exceed the copayment under Medicare and that providers shall be reimbursed no less than the amount under the Medicare reimbursement schedule. The bill would provide that there shall be no separate annual or lifetime dollar maximum on prosthetics coverage.

The bill would provide that "prosthetic" means artificial legs and arms and associated components.

### **LB 176 (Lathrop) Prohibit use of credit information for insurance purposes and repeal the model act**

#### **Left in committee**

This bill would enact a new section to provide that (1) an insurer shall not use credit information in connection with the issuance, underwriting, renewal, cancellation, or denial of or any other action related to insurance and (2) an insurer shall not use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor.

The bill would provide definitions for "consumer," "credit information," "credit report," "insurance score," and "insurer."

The bill would provide that it becomes operative on January 1, 2010.

The bill would outright repeal sections 44-7701 to 44-7712, the Model Act Regarding Use of Credit Information in Personal Insurance.

**LB 378 (Gloor, Howard) Require insurance coverage of medical clinical trials**

**Left in Committee**

This bill would enact a new section to provide that any individual or group sickness and accident insurance policy, certificate, or subscriber contract and any self-funded employee benefit plan to the extent not preempted by federal law shall include coverage for routine patient care costs that a policyholder or certificate holder, or dependent, receives during enrollment in a clinical trial if: (1) the clinical trial is approved by an institutional review board pursuant to 45 C.F.R. 46; (2) the patient care is provided by a certified, registered, or licensed health care provider practicing within the scope of his or her practice and the facility and personnel have the experience and training to provide the treatment in a competent manner; and (3) the patient has signed a statement of consent.

The bill would provide that coverage does not include: (1) any portion of the clinical trial paid for by a government or by a part of the biotechnical, pharmaceutical, or medical industry; (2) coverage paid for by the manufacturer, distributor, or provider of the drug or device; (3) extraneous expenses related to participation in the clinical trial; (4) an item or service provided solely for data collection or analysis; or (5) costs for management of research.

The bill would provide definitions for "clinical trial" and "routine patient care."

**LB 493 (Karpisek) Require insurance coverage for cochlear implants**

**Left in committee**

This bill would enact a new section to provide that individual and group sickness and accident insurance policies, certificates, and subscriber contracts; hospital, medical, or surgical expense-incurred policies; and self-funded employee benefit plans to the extent not preempted by federal law shall provide coverage for single or bilateral cochlear implants for persons diagnosed with severe to profound hearing impairment.

**LB 637 (Mello) Require disclosure of information by certain group health carriers**

**Left in committee**

This bill would enact a new section in the insurance statutes to provide that an insurance company, fraternal benefit society, or health maintenance organization issuing a group

health benefit plan to a group of fifty-one or more covered employees shall provide to the sponsor of the group health benefit plan or to an insurance producer authorized by the group sponsor, upon request by the group sponsor or the insurance producer, annually, but not more than three months prior to the renewal date, the total amount of actual claims identified as paid or incurred and paid by month, including claims experience for medical, dental, and pharmacy benefits, as applicable, the total number of covered employees on a monthly basis by coverage tier, the total number of covered employees that have reached deductible by tier, the major categories of expenses, and the total premium paid by month. The bill would provide that the required information shall be provided for the immediately preceding thirty-six months or for the entire period of coverage, whichever is shorter.

The bill would provide that a violation shall be subject to the Unfair Insurance Trade Practices Act.

The bill would provide the Director of Insurance with rule and regulation authority.

### **LB 693 (Price, McCoy) Provide authorization for foreign insurers to offer health insurance in Nebraska**

#### **Left in Committee**

This bill would enact a new section in the insurance statutes to provide that the Director of Insurance, in consultation with the Attorney General, may enter into interstate agreements with other states to authorize issuance of sickness and accident insurance policies in Nebraska by foreign insurers from such states.

The bill would provide that the Director of Insurance and the Attorney General shall certify that the other state's law with respect to sickness and accident insurance policies are substantially similar to those of Nebraska. The bill would provide that the foreign insurers shall not be required to offer or provide coverage required by Nebraska law. The bill would provide that the director may conduct market and solvency examinations of the foreign insurers. The bill would provide that the director, when determining whether to enter into an interstate agreement, shall consider whether insured individuals will have access to a sufficient number of health care providers in Nebraska. The bill would provide that an interstate agreement shall include provisions to resolve claims and benefit payment issues and to provide for suspension or revocation of the interstate agreement by the State of Nebraska. The bill would provide that the director may enter into an interstate agreement to allow Nebraska domestic insurers to offer sickness and accident policies in another state.

The bill would amend sections 44-114, 44-134, 44-135, 44-152, and 44-162 of the departmental power statutes, sections 44-304 and 44-319.06 of the general insurance provisions statutes, section 44-2132 of the Insurance Holding Company System Act, section 44-2710 of the Nebraska Life and Health Insurance Guaranty Association Act,

section 44-4850 of Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, and section 44-6203 of the Assumption Reinsurance Act to harmonize provisions.

The bill would further amend section 44-135 to provide that a foreign insurer shall not be subject to the law of this state except as specifically provided in this bill. The bill would amend section 44-710.08 of the sickness and accident insurance statutes to specify notices to be placed in applications for individual policies and in individual policies issued by a foreign insurer.

The bill would provide that it becomes operative on January 1, 2011.

**LB 807 (McCoy) Require automobile liability policies to be issued for a minimum term**

**Left in Committee**

This bill would enact a new section in the Property and Casualty Insurance Rate and Form Act to provide (1) that the initial policy period or term of a newly issued private passenger automobile liability policy shall not be less than six months and (2) that nothing in the bill would prohibit an insurer or an insured from canceling the policy within six months.

**LB 813 (Gloor) Prohibit prepaid dental service plans from limiting fees for certain services**

**Enacted**

**Effective July 15, 2010**

This bill amends sections 44-3802 and 44-3805 of the prepaid dental service plan statutes to provide that no prepaid dental service plan shall limit any fees charged for services that are not covered by the plan.

The bill passed 47-0-2 on April 9, 2010 and was signed by the Governor on April 12, 2010.

**LB 912 (Pahls, Langemeier) Prohibit occupant recovery limits in uninsured and underinsured motorist coverage**

**Left on General File**

## OVERVIEW

This bill would amend the Uninsured (UM) and Underinsured (UIM) Motorist Insurance Coverage Act and the Property and Casualty Insurance Rate and Form Act to restrict the ability of motor vehicle insurance companies to provide UM and UIM coverages to unrelated passengers and liability coverage to permissive users on a "step down limits basis" regardless of any higher limits requested by the named insured.

## SUMMARY

The bill would provide, section by section, as follows:

Section 1 would amend section 44-6413 of the Uninsured and Underinsured Motorist Insurance Coverage Act to provide that the UM and UIM motorist coverage limits of a motor vehicle liability insurance policy shall be provided on the same basis for all persons occupying the insured motor vehicle. This section would provide that these amendments shall not limit application of a per person or per accident limitation to a covered occupant.

Sections 2 and 3 would amend section 44-7501 of the Property and Casualty Insurance Rate and Form Act and would enact a new section in the act to provide that the liability limits of a motor vehicle liability insurance policy shall provide liability insurance protection on the same basis for all persons insured under such coverage. Section 3 would further provide that these amendments shall not limit application of a per person or per accident limitation to a covered occupant.

Section 4 would provide for repealers of the amendatory sections.

Sections 5 would provide for the emergency clause.

### **LB 959 (Lathrop, Council) Prohibit certain discriminatory acts or practices related to the business of insurance**

#### **Left in Committee**

This bill would amend section 44-1525 of the Unfair Insurance Trade Practices Act to provide that it shall be an unfair trade practice in the business of insurance for an insurer to engage in any act or practice in connection with the issuance, underwriting, rating, renewal, cancellation, or denial of or any other act related to a property or casualty insurance policy in a manner that has the effect of discrimination against any consumer because of his or her race, creed, national origin, or religion.

### **LB 1017 (Cornett) Provide requirements for insurers for prescription drug coverage**

#### **Left in Committee**

This bill would enact a new section to provide requirements for health insurers for prescription drug coverage.

The bill would provide that (1) a health insurer shall not create specialty tiers that require payment of a percentage cost of prescription drugs, and (2) a health insurer shall not charge (a) a prescription drug copay that exceeds the cost per prescription of the prescription drug to the health benefit plan or (b) a prescription drug copay that exceeds by five hundred percent the lowest prescription drug copay charged under the plan.

The bill would provide that if a health insurer's health benefit plan provides a limit for out-of-pocket expenses for benefits other than prescription drugs, the insurer shall provide in its plan that either (1) out-of-pocket expenses for prescription drugs shall be included under the plan's total limit for out-of-pocket expenses for all benefits provided under the plan or (2) out-of-pocket expenses for prescription drugs per contract year shall not exceed one thousand dollars per insured or two thousand dollars per insured family, adjusted for inflation.

The bill would provide the Director of Insurance with rule and regulation authority to carry out this section.

NOTE: LR 334 (Cornett) calls for the Banking, Commerce and Insurance Committee to conduct an interim study to examine issues raised during consideration of LB 1017.

## **LB 1088 (Cornett) Adopt the Physicians and Patient Prescription Protection Act**

### **Left in Committee**

#### **OVERVIEW**

This bill would enact the Physician and Patient Prescription Protection Act to provide that a health carrier or pharmacy benefit manager shall send a notification of request for medication change to the patient and to the patient's physician or other prescribing health care professional any time the health carrier or pharmacy benefit manager recommends changing the patient's medication to a different therapeutic agent. The bill would prescribe requirements governing the notifications.

#### **SUMMARY**

The bill would provide, section by section, as follows:

Section 1 would enact a new section to provide for a named act: the Physician and Patient Prescription Protection Act.

Section 2 would enact a new section to provide for definitions: (1) "generic equivalent;" (2) "health carrier;" (3) "notification of request for medication change" (a written communication to a patient and to the patient's prescribing health care professional that

recommends that a patient's medication be changed to a different medication); (4) "pharmacy benefits manager;" and (5) "therapeutic alternative."

Section 3 would enact a new section to provide that a health carrier or pharmacy benefit manager shall send a notification of request for medication change to a patient and the patient's physician or other prescribing health care professional any time the health carrier or pharmacy benefit manager recommends changing the patient's medication to a different therapeutic agent. This section would further provide that a notification of request for medication change shall: (a) identify the originally prescribed medication and the medication to which the patient would be changed; (b) provide information required by the Food and Drug Administration; (c) include product information about risks associated with the recommended medication change; (d) explain any financial incentives provided or offered to the prescribing health care professional by the health carrier or the pharmacy benefit manager in exchange for the prescribing health care professional's express permission to change the medication; (e) explain any financial incentives that a health carrier or pharmacy benefit manager may receive to encourage the medication change; (f) state that the patient has the right to discuss the proposed medication change; (g) explain any cost-sharing changes for which the patient would be responsible; and (h) acknowledge that no medication change shall be allowed without the express authorization of the original prescribing physician.

Section 4 would enact a new section to provide that premium payors and employers shall be notified of medication change programs adopted by health carriers and pharmacy managers.

Section 5 would enact a new section to provide that the Department of Insurance shall create and provide forms for use in notifications of request for medication change.

Section 6 would enact a new section to provide that the Department of Insurance shall adopt and promulgate rules governing notifications of request for medication change.

Section 7 would enact a new section to provide that issuing or delivering a notification of request for medication change that is not in compliance with this act or that contains a misrepresentation or false statement is punishable by a fine not to exceed twenty-five thousand dollars.

NOTE: LR 406 (Cornett) calls for the Banking, Commerce and Insurance Committee to conduct an interim study to examine issues raised during consideration of LB 1088.

## **INTEREST, LOANS, AND DEBT**

### **LB 431 (McGill) Change Delayed Deposit Services Licensing Act provisions**

#### **Left in committee**

#### **OVERVIEW**

This bill would amend sections 45-901, 45-906, 45-915, 45-919, 45-921, 45-925, and 45-927 of the Delayed Deposit Services Licensing Act and would enact four new sections within the act to provide that a licensee shall not enter into another delayed deposit transaction with a maker (customer) within seventy-two hours after completion of a delayed deposit transaction by such maker with the licensee or any other licensee or if such maker has a delayed deposit transaction that is not complete with the licensee or any other licensee. The bill would require that the Director of Banking and Finance, or a third-party provider, shall develop, implement, and maintain a data base accessible to licensees to facilitate compliance with the act. The bill would require the cost of the data base to be paid for with fees paid by the licensees.

#### **SUMMARY**

The bill would provide, section by section, as follows:

Section 1 would amend section 45-901 of the Delayed Deposit Services Licensing Act to provide that new sections 7 to 10 of the bill shall be assigned within the act.

Section 2 would amend section 45-906 of the Delayed Deposit Services Licensing Act to provide that an application for a delayed deposit services license shall be accompanied by a data base fee of one hundred dollars to defray the costs of establishing a data base pursuant to new section 7 of the bill, and that the fee shall terminate on the date the Director of Banking and Finance implements the data base.

Section 3 would amend section 45-915 of the Delayed Deposit Services Licensing Act to provide that a data base fee of one hundred dollars shall be paid to the Director of Banking and Finance for each request by a licensee to change the location of its designated principal place of business or to establish or change the location of a branch office, that the fee shall be used to defray the costs of establishing the data base pursuant to section 7 of the bill, and that the fee shall terminate on the date the director implements the data base.

Section 4 would amend section 45-919 of the Delayed Deposit Services Licensing Act to provide that no licensee shall (1) enter into another delayed deposit transaction with a maker (customer) within seventy-two hours after completion of a delayed deposit transaction by such maker with the licensee or any other licensee or (2) enter into another delayed deposit transaction with a maker if such maker has a delayed deposit transaction that is not complete with the licensee or any other licensee. This section would also expand the definition of "completion of a delayed deposit transaction" to mean (1) the

licensee has presented the maker's check for payment to a financial institution and has received payment for the check, (2) the licensee has written the maker's check off as a bad debt after it was returned unpaid by the financial institution, or (3) the licensee has sold the check to a third party after it was returned unpaid by the financial institution.

Section 5 would amend section 45-921 of the Delayed Deposit Services Licensing Act to update provisions regarding disposition of administrative fines.

Section 6 would amend section 45-925 of the Delayed Deposit Services Licensing Act to update an internal reference and repeal provisions made obsolete by amendments proposed in section 45-919 by new section 4 of the bill.

Section 7 would enact a new section within the Delayed Deposit Services Licensing Act to provide that, on or before January 1, 2011, the Director of Banking and Finance or a third-party provider, whoever is the data base provider, shall develop, implement, and maintain a statewide data base that, at all times, is accessible to licensees and is accessible to the director, if the director is not the data base provider. This section would provide that the data base shall be used to facilitate compliance by licensees with section 45-919 and to create an annual report pursuant to new section 9 of the bill. This section would provide that the data base shall allow a licensee accessing the data base to verify whether a maker has any open delayed deposit service transactions with any licensee that have not been completed. This section would provide that the data base provider may charge each licensee a verification fee for access to the data base in amounts approved by the director.

Section 8 would enact a new section within the Delayed Deposit Services Licensing Act to provide that if the Director of Banking and Finance has not yet implemented a data base or the data base is not fully operational, the licensee shall verify that a maker does not have an open delayed deposit services transaction with the licensee by way of a data base which the licensee shall maintain of all of its transactions at all of its locations. This section would provide that if the director has implemented a data base and the data base is fully operational, the licensee shall access the data base and verify that a maker does not have any transactions in violation of section 45-919. Section 8 would provide that if the director has not yet implemented a data base, the data base is not fully operational, or the licensee is unable to access the data base due to technical difficulties, a licensee may rely upon written verification of the maker that the maker does not have any outstanding delayed deposit services transactions with any licensee. This section would provide that the director may impose a data base verification fee, not to exceed one dollar per transaction, for data required to be submitted by a licensee. This section would require that for the first twelve months that the data base is operational, an additional licensing fee of fifty cents per transaction shall be paid to defray the costs of establishing the data base. This section would provide that the director may assess each licensee and each branch office a data base fee not to exceed one hundred dollars to defray the costs of establishing the data base and that the fee shall terminate on the date the director implements the data base.

Section 9 would enact a new section within the Delayed Deposit Services Licensing Act to provide that the Director of Banking and Finance or the third-party provider shall compile an annual report.

Section 10 would enact a new section within the Delayed Deposit Services Licensing Act to provide for limitations on liability.

Section 11 would amend section 45-927 of the Delayed Deposit Services Licensing Act to update provisions regarding disposition of cash funds and disposition of administrative fines.

Section 12 would provide for repealers of amendatory sections.

**LB 892e (Pahls, Pirsch) Change provisions relating to federal deposit insurance requirements, residential mortgage licensing, installment loans, and reverse mortgages**

**Enacted**

**Effective March 4, 2010**

This bill, introduced at the request of the Director of Banking and Finance, updates and clarifies various provisions of the Residential Mortgage Licensing Act (RMLA) and Nebraska Installment Loan Act (NILA) as these acts relate to mortgage loan originators and reverse mortgages. The bill provides, section by section, as follows:

**MORTGAGE LOAN ORIGINATORS EMPLOYED BY BANKS**

Section 1 amends section 8-702 of the state-federal cooperation acts to change the deadline for registration of mortgage loan originators employed by banks from July 31, 2010, to July 31, 2010, or within sixty days after the Nationwide Mortgage Licensing System and Registry is capable of accepting such registrations, whichever occurs later. This recognizes a delay in implementation of the registration system.

**INTEREST RATES**

Section 2 amends section 45-101.04, relating to general interest rates, to change a reference for reverse mortgages from section 45-1068 of the NILA to new section 5 of the bill.

**RESIDENTIAL MORTGAGE LOANS**

Section 3 amends section 45-701 of the RMLA to provide that new section 5 of the bill shall be assigned within the RMLA.

Section 4 amends section 45-702 of the RMLA to provide a definition of "reverse-mortgage loan" based on provisions in section 45-1068 of the NILA (section 24 of the bill).

Section 5 enacts a new section in the RMLA to provide requirements for reverse mortgage loans under the RMLA based on provisions in section 45-1068 of the NILA (section 24 of the bill).

Sections 6 and 7 amend section 45-704 and 45-705 of the RMLA to clarify terminology.

Section 8 amends section 45-724 of the RMLA to clarify bonding requirements for registrants under the RMLA.

Sections 9 and 10 amend sections 45-725 and 45-726 of the RMLA to clarify terminology.

Section 11 amends section 45-728 of the RMLA to update an internal reference to federal law.

Sections 12 and 13 amend sections 45-730 and 45-733 of the RMLA to clarify terminology.

Section 14 amends section 45-737 of the RMLA to clarify the requirement that a licensee shall notify the Department of Banking and Finance no later than three days after the filing of a bankruptcy by the licensee or against the licensee, whether voluntary or involuntary; and to provide that a licensee shall notify the department within thirty days after the occurrence of certain material developments.

Section 15 amends section 45-741 of the RMLA to clarify terminology and update an internal reference to federal law.

Section 16 amends section 45-742 of the RMLA to provide that the Director of the Banking and Finance may impose administrative action under the RMLA if a licensee knowingly employs or contracts with an individual and such individual (i) has had a mortgage loan originator license revoked in any state, unless such revocation was subsequently vacated or (ii) has a mortgage loan originator license which has been suspended by the director. This section also gives the director the authority to refuse to accept the surrender of a license if an investigation, examination, or administrative disciplinary action is in process at the time of the attempted license surrender.

Section 17 amends section 45-748 of the RMLA to clarify provisions.

Section 18 amends section 45-749 of the RMLA to change the placement of the subsection authorizing sharing arrangements with other agencies and associations representing governmental agencies.

#### INSTALLMENT LOANS

Section 19 amends section 45-1002 of the NILA to clarify internal references.

Section 20 amends section 45-1005 of the NILA to clarify terminology.

Section 21 amends section 45-1018 of the NILA to clarify that, as of January 1, 2011, installment loan licensees will be required to file both financial statements and mortgage reports of condition with the Department of Banking and Finance.

Section 22 amends section 45-1033.01 of the NILA to correct references to persons under the NILA who may be subject to background checks and who have the right to challenge information entered into the NMLS.

Section 23 amends section 45-1033.02 of the NILA to correct references to persons under the NILA, and to change the placement of the subsection authorizing sharing arrangements with other agencies and associations representing government agencies.

Section 24 amends section 45-1068 of the NILA to update provisions regarding reverse-mortgage loans.

#### MISCELLANEOUS PROVISIONS

Section 25 provides for repealers of the amendatory sections.

Section 26 provides for the emergency clause.

The bill passed 47-0-2 on February 25, 2010 with the emergency clause and was signed by the Governor on March 3, 2010.

## **REAL PROPERTY**

### **LB 736e (Pirsch) Provide for liens for assessments and fines by homeowners' associations**

**Enacted**

**Effective March 4, 2010**

The bill enacts a new section to provide that a homeowners' association shall have a lien on a member's real estate for any assessment levied against real estate or fines imposed against its owner from the time the assessment or fine becomes due and a notice of lien is recorded. The bill provides that a homeowners' association's lien may be foreclosed in like manner as a mortgage on real estate.

The bill further provides that a homeowners' association lien is prior to all other liens and encumbrances except (a) liens and encumbrances recorded before the recordation of the declaration or agreement, (b) a first mortgage or deed of trust recorded before the date on which the assessment became delinquent, and (c) liens for real estate taxes and other governmental assessments or charges.

The bill passed 47-0-2 on February 25, 2010 with the emergency clause and was signed by the Governor on March 3, 2010.

### **LB 738e (McCoy) Change provisions relating to the substitution of trustee under the Nebraska Trust Deeds Act**

**Enacted**

**Effective March 4, 2010**

The bill amends section 76-1004 of the Nebraska Trust Deeds Act to provide that, on and after the effective date of the bill, there shall be no requirement for a beneficiary, in connection with the recording of the substitution of trustee, to provide notice of the substitution to the trustee being replaced, and any recorded substitution filed prior to the effective date of the bill, without having provided such notice, shall not be deemed incomplete or defective because such notice was not provided.

The bill passed 46-0-3 on February 25, 2010 with the emergency clause and was signed by the Governor on March 3, 2010.

## **LB 818 (Sullivan, Utter) Change the Real Property Appraiser Act**

### **Left in Committee**

### **Modified provisions amended into LB 931e and Enacted**

This bill would amend section 76-2221 of the Real Property Appraiser Act to provide that a real estate licensee may give a broker's price opinion or comparative market analysis for the purpose of assisting lenders or borrowers or prospective lenders or borrowers in obtaining or extending financing in a transaction other than a real-estate related transaction that (1) requires the services of an appraiser and (2) is engaged in, contracted for, or regulated by the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision, or National Credit Union Administration.

The bill carries the emergency clause.

## **LB 931e (Sullivan, Utter) Change and Eliminate Provisions of the Real Property Appraiser Act and the Nebraska Real Estate License Act**

### **Committee Priority Bill (Banking, Commerce and Insurance Committee)**

### **Enacted**

### **Contains modified provisions of LB 818**

### **Effective April 15, 2010**

#### **OVERVIEW**

This bill makes various changes in the Real Property Appraiser Act and the Nebraska Real Estate License Act. The bill updates provisions; repeals obsolete provisions; harmonizes terminology; adds and updates definitions; requires courses of study to be at "degree-awarding" universities, colleges, and community colleges; establishes requirements to upgrade credentials; and allows a real estate licensee to prepare a broker's price opinion or comparative market analysis intended for lending purposes in a transaction other than a federally related transaction.

#### **SUMMARY**

The bill provides, section by section, as follows:

Section 1 amends section 76-2202 of the Real Property Appraiser Act to provide legislative findings that Nebraska's laws governing real property appraisers require restructuring in order to comply with the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989. This section further provides that compliance with the

federal act is necessary to ensure an adequate number of appraisers in Nebraska to conduct appraisals of real estate involved in federally related transactions.

Section 2 amends section 76-2206 of the Real Property Appraiser Act to provide that an "appraisal report" shall be defined to include, among other things, a communication by "electronic means."

Section 3 amends section 76-2213 of the Real Property Appraiser Act to provide that the definition "licensed real property appraiser" shall be changed to "licensed residential real property appraiser."

Section 4 amends section 76-2213.01 of the Real Property Appraiser Act to provide that "Uniform Standards of Professional Appraisal Practice" shall be defined as the standards promulgated by the Appraisal Foundation, as the standards existed on January 1, "2010" rather than January 1, "2008."

Section 5 amends section 76-2216 of the Real Property Appraiser Act to provide that a "real property appraiser" shall not be defined a person who, among other things, performs real property appraisal activity "with the intention or upon the promise of receiving valuable consideration."

Section 6 amends section 76-2221 of the Real Property Appraiser Act to repeal provisions which provided that the act shall not apply to a real estate licensee who, in the ordinary course of business, gives a broker's price opinion or comparative market analysis for the purpose of assisting in the listing, offering, or sale price of the real property. This section further provides that this exception is governed by the Nebraska Real Estate License Act (see new section 28 of the bill).

Section 7 amends section 76-2223 of the Real Property Appraiser Act to provide that the Real Property Appraiser Board may administer or contract for the administration of examinations "approved by the Appraiser Qualifications Board;" review the procedures and criteria of a contracted testing service to ensure that the testing meets with the approval of the Appraiser Qualifications Board; and establish and adopt minimum standards for appraisals rather than establish and "annually" adopt minimum standards for appraisals.

Section 8 amends section 76-2225 of the Real Property Appraiser Act to provide that employees of the Real Property Appraiser Board and persons under contract with the board, as well as members of the board, shall be immune from any civil action or criminal prosecution for initiating or assisting in any lawful investigation of the actions of or any disciplinary proceeding concerning a credential holder if such action is taken without malicious intent and in reasonable belief that it was taken pursuant to the powers vested in such persons.

Section 9 amends section 76-2228 of the Real Property Appraiser Act to provide that a licensed real property appraiser shall be known as a licensed "residential" real property appraiser.

Section 10 amends section 76-2228.01 of the Real Property Appraiser Act to provide that an applicant for a credential as a trainee real property appraiser shall complete seventy-five class hours in board approved courses which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course as approved by the Appraiser Qualifications Board "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section provides that the courses of study shall be conducted by, among other things, a "degree-awarding" university, college, or community college. This section provides that a supervising appraiser of a trainee real property appraiser shall personally inspect each appraised property with the trainee "as is consistent with his or her scope of practice." This section provides for requirements for a trainee real property appraiser to qualify for an upgraded credential as a licensed residential real property appraiser, certified residential real property appraiser, or certified general real property appraiser. This section provides that if a trainee real property appraiser remains in the classification in excess of two years, the trainee shall, among courses of study, complete the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course "as the course existed on January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section provides that the courses of study shall be conducted by, among other things, a "degree-awarding" university, college, or community college. This section repeals obsolete provisions.

Section 11 amends section 76-2229 of the Real Property Appraiser Act to harmonize terminology.

Section 12 amends section 76-2229.01 of the Real Property Appraiser Act to provide that an applicant for a credential as a registered real property appraiser shall complete ninety class hours in board-approved courses which include the fifteen-hour National Uniform Standards of Professional Appraiser Practice Course as approved by the Appraiser Qualifications Board "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section provides that the courses of study shall be conducted by, among other things, a "degree-awarding" university, college, or community college. This section also provides that an applicant for a credential as a registered real property appraiser shall "within the twelve months following approval of the applicant by the Real Property Appraiser Board, pass" an examination "approved by the Appraiser Qualifications Board as of January 1, 2010, and" administered by "a contracted testing service" rather than by the Real Property Appraiser Board. This section provides requirements for a registered real property appraiser to qualify for an upgraded credential as a licensed residential real property appraiser, certified residential real property appraiser, or certified general real property appraiser. This section harmonizes terminology and repeals obsolete provisions.

Section 13 amends section 76-2230 of the Real Property Appraiser Act to provide that an applicant for a credential as a licensed residential real property appraiser shall complete one hundred fifty class hours in board-approved courses which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course as approved by the Appraiser Qualifications Board "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section provides that the courses of study shall be conducted by, among other things, a "degree-awarding" university, college, or community college. This section also provides that an applicant for a credential as a licensed residential real property appraiser shall within the "twelve" months following approval of the applicant by the Real Property Appraiser Board, pass an examination "approved by the Appraiser Qualifications Board as of January 1, 2010, and" administered by "a contracted testing service" rather than shall within the "twenty-four" months following approval of the applicant by the Real Property Appraiser Board, pass "a closed-book" examination administered by the Real Property Appraiser Board. This section provides requirements for a licensed residential real property appraiser to qualify for an upgraded credential as a certified residential real property appraiser or certified general real property appraiser. This section provides that if an applicant is applying for renewal of a credential as a licensed residential real property appraiser, the applicant shall complete, among other things, the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course as approved by the Appraiser Qualifications Board "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section harmonizes terminology and repeals obsolete provisions.

Section 14 amends section 76-2231.01 of the Real Property Appraiser Act to provide that an applicant for a credential as a certified residential real property appraiser shall complete two hundred class hours in board-approved courses which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course as approved by the Appraiser Qualifications Board "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section provides that the courses of study shall be conducted by, among other things, a "degree-awarding" university, college, or community college. This section repeals provisions which provide that credit toward the class hour requirement may be awarded to teachers of appraisal courses. This section also provides that an applicant for a credential as a certified residential real property appraiser shall within the "twelve" months following approval of the applicant by the Real Property Appraiser Board, pass an examination "approved by the Appraiser Qualifications Board as of January 1, 2010, and" administered by "a contracted testing service" rather than shall within the "twenty-four" months following approval of the applicant by the Real Property Appraiser Board, pass "a closed-book" examination administered by the Real Property Appraiser Board. This section provides requirements for a certified residential real property appraiser to qualify for an upgraded credential as a certified general real property appraiser. This section provides that if an applicant is applying for renewal of a credential as a certified residential real property appraiser, the applicant shall complete, among other things, the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course as approved by the Appraiser Qualifications Board "as of January 1, 2010, or the equivalent of the course as

approved by the Real Property Appraiser Board." This section harmonizes terminology and repeals obsolete provisions.

Section 15 amends section 76-2232 of the Real Property Appraiser Act to provide that an applicant for a credential as a certified general real property appraiser shall complete three hundred class hours in board-approved courses which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course as approved by the Appraiser Qualifications Board "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section provides that the courses of study shall be conducted by, among other things, a "degree-awarding" university, college, or community college. This section also provides that an applicant for a credential as certified general real property appraiser shall within the "twelve" months following approval of the applicant by the Real Property Appraiser Board, pass an examination "approved by the Appraiser Qualifications Board as of January 1, 2010, and" administered by "a contracted testing service" rather than shall within the "twenty-four" months following approval of the applicant by the Real Property Appraiser Board, pass "a closed-book" examination administered by the Real Property Appraiser Board. This section provides that if an applicant is applying for renewal of a credential as a certified general real property appraiser, the applicant shall complete, among other things, the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course as approved by the Appraiser Qualifications Board "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board." This section harmonizes terminology and repeals obsolete provisions.

Section 16 amends section 76-2233 of the Real Property Appraiser Act to update terminology.

Section 17 amends section 76-2233.01 of the Real Property Appraiser Act to update terminology.

Section 18 amends section 76-2233.02 of the Real Property Appraiser Act to provide that a credential issued under the act shall remain in effect until December 31 "of the designated year" rather than until December 31 "following the date of credentialing."

Section 19 amends section 76-2236 of the Real Property Appraiser Act to repeal provisions which provide that the Real Property Appraiser Board may extend or waive the continuing education requirements by rule or regulation. This section provides that at least once every two years, the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course "as of January 1, 2010, or the equivalent of the course as approved by the Real Property Appraiser Board," shall be included in the continuing education requirement of each credential holder. This section requires that at least once every four years, a seven-hour report writing update course shall be included in the continuing education requirement of each credential holder. This section provides that a person who holds a "reciprocal" as well as a temporary credential shall not have to meet any continuing education requirements in this state.

Section 20 amends section 76-2237 of the Real Property Appraiser Act to provide that rules and regulations of the Real Property Appraiser Board shall be "transmitted electronically" to each credential holder rather than "mailed to the business address of" each credential holder "and shall be made available on the board's website."

Section 21 amends section 77-2238 of the Real Property Appraiser Act to provide that failure of an educational provider to produce records, documents, reports, or other materials to the Real Property Appraiser Board is grounds for disciplinary action or denial of an application by the board.

Section 22 amends section 76-2240 of the Real Property Appraiser Act to provide that administrative hearings on disciplinary actions shall be conducted by a hearing officer rather than the Real Property Appraiser Board.

Section 23 amends section 76-2241 of the Real Property Appraiser Act to harmonize terminology and update provisions.

Section 24 amends section 76-2249 of the Real Property Appraiser Act to update provisions.

Section 25 amends section 77-5004 of the Tax Equalization and Review Commission Act to harmonize terminology.

Section 26 amends section 81-885 of the Nebraska Real Estate License Act to provide that new section 28 of the bill shall be assigned within the act.

Section 27 amends section 81-885.01 of the Nebraska Real Estate License Act to change the definitions of "broker's price opinion" and "comparative market analysis" in order to provide that a broker's price opinion or a comparative market analysis may be provided by a real estate licensee in connection with originating, extending, renewing, or modifying a loan in a transaction other than a federally related transaction. This section also provides for new definitions of "federal financial institution regulatory agency" and "federally related transaction" (a real estate-related transaction that (a) requires the services of an appraiser and (b) is engaged in, contracted for, or regulated by a federal financial institution regulatory agency).

Section 28 enacts a new section in the Nebraska Real Estate License Act to provide that the Real Property Appraiser Act shall not apply to a real estate licensee who gives a broker's price opinion or comparative market analysis. This section provides that such broker's price opinion or comparative market analysis shall be in writing, be signed by the preparer, and include the date it was prepared. This section further provides that such broker's price opinion or comparative market analysis prepared in connection with originating, extending, renewing, or modifying a loan in a transaction other than a federally related transaction may not be used as the sold basis to determine the value of the real estate which secures the loan.

Section 29 provides for repealers of the amendatory sections.

Section 30 provides for outright repeal of the following sections of the Real Property Appraiser Act: section 76-2207 (definition of "appraiser trainee"); section 76-2209 (definition of "broker's price opinion"); and section 76-2211 (definition of "comparative market analysis").

Section 31 provides for the emergency clause.

The bill passed 45-4-0 on April 12, 2010 with the emergency clause and was signed by the Governor on April 14, 2010.

NOTE: LR 413 (Langemeier) calls on the Banking, Commerce and Insurance Committee to study whether the Real Property Appraiser Act should be amended to provide for regulation of appraisal management companies. (LB 931, as introduced, contained provisions regarding appraisal management companies. Those provisions were deleted from the bill by the committee amendments.)

## **LB 1051e (Christensen) Change provisions relating to certificate terms, fees, and rosters of abstracters**

### **Speaker Priority Bill**

### **Enacted**

### **Effective April 2, 2010**

#### **OVERVIEW**

This bill amends the Abstracters Act to provide for (1) renewal of certificates of authority every even-numbered year rather than each year, (2) adjustment of maximum application fees for certificates of authority, (3) adjustment of minimum and maximum renewal fees for certificates of authority, and (4) preparation of the roster of abstracters every even-numbered year rather than every year and furnishing of the roster to the public on request at the cost of production.

#### **SUMMARY**

The bill provides, section by section, as follows:

Section 1 amends section 76-545 of the Abstracters Act to provide that the application fee for a certificate of authority shall be not less than twenty-five dollars or more than "two" hundred dollars rather than not less than twenty-five dollars or more than "one" hundred dollars. (Fees are established by the Abstracters Board of Examiners.)

Section 2 amends section 76-547 of the Abstracters Act to provide that certificates of authority shall expire on April 1 of each "even-numbered" year rather than on April 1 of

each year, and shall be renewed upon payment of a renewal fee of not less than "fifty" dollars or more than "four" hundred dollars rather than not less than "twenty-five" dollars or more than "two" hundred dollars. (Fees are established by the Abstracters Board of Examiners.)

Section 3 amends section 76-550 of the Abstracters Act to provide that a roster of abstracters holding a certificate of registration (which is sent to all registered abstracters) shall be prepared by the director during June of "each even-numbered" year rather than during June of "every" year and shall be furnished to the public on request "at the cost of producing such roster."

Section 4 provides repealers.

Section 5 provides the emergency clause.

Background: A "certificate of authority" is the authorization to engage in the business of abstracting granted to an individual or business entity. (Section 76-537(5).) A "certificate of registration" is the authorization to prepare abstracts of title which is granted to an individual. (Section 76-537(6).) An individual or business entity shall not engage in the business of abstracting unless a certificate of authority has been issued to the individual or business entity. (Section 76-539(1).) Every individual or business entity engaged in the business of abstracting shall be or have in its employ a registered abstracter. (Section 76-539(2).)

The bill passed 49-0-0 on March 26, 2010 with the emergency clause and was signed by the Governor on April 1, 2010.

## PUBLIC FUNDS DEPOSITS

### **LB 428 (Christensen) Authorize deposit of public funds in credit unions and clarify Federal Deposit Insurance Corporation and National Credit Union Administration coverage**

#### **Left in committee**

This bill would amend section 77-2365.01 to provide that a political subdivision located in a community where there is no bank, capital stock financial institution, or qualifying mutual financial organization may deposit public funds with a state or federal mutual organized credit union in the community where the office of the political subdivision is located in an amount not to exceed the amount insured or guaranteed by the National Credit Union Administration. This section would define a qualifying mutual financial institution to include a state or federal mutual organized credit union which is located in a community where there is no bank, capital stock financial institution, or qualifying mutual financial institution.

The bill would also amend various sections in Chapters 2, 14, 15, 16, 17, 30, and 77 and would enact a new section (section 24 of the bill) to be assigned to Chapter 77, article 23, to provide that for purposes of any law requiring a bank, capital stock financial institution, or qualifying mutual financial institution to secure the deposit of public money or public funds in excess of the amount insured by the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Administration (NCUA), references to amounts "insured" by the FDIC or NCUA also include amounts "guaranteed" by the FDIC or NCUA.

The bill carries the emergency clause.

## REAL ESTATE LICENSEES

### **LB 691 (Langemeier) Provide for issuance of cease and desist orders under the Nebraska Real Estate License Act**

#### **Enacted**

#### **Effective July 15, 2010**

This bill amends sections 81-885.03, 81-885.10, 81-885.25, and 81-885.29 of the Nebraska Real Estate License Act to provide that engaging by any person in an act described in the definition of a real estate broker constitutes sufficient contact with the state for the exercise of personal jurisdiction over the person, and that the director of the State Real Estate Commission may issue a cease and desist order against a person who performs such an act without a license, and that if such person violates a cease and desist order he or she shall be subject to further proceedings before the commission, including imposition of an administrative fine not to exceed one thousand dollars per day of violation or the amount of commissions earned, whichever is greater.

The bill passed 47-0-2 on February 25, 2010 and was signed by the Governor on March 3, 2010.

## ECONOMIC DEVELOPMENT

### **LB 657 (Harms) Change the Microenterprise Development Act**

#### **Left on General File**

This bill would amend sections regarding microenterprises. The bill would provide, section by section, as follows:

#### **BUSINESS DEVELOPMENT PARTNERSHIP**

Section 1 would amend section 81-1276 of the Business Development Partnership Act to eliminate contracting to provide surety bond support from among the duties of the Existing Business Assistance Division of the Department of Economic Development.

#### **MICROENTERPRISE DEVELOPMENT**

Section 2 would amend section 81-1295 of the Microenterprise Development Act to harmonize an internal reference.

Section 3 would amend section 81-1296 of the Microenterprise Development Act to eliminate a legislative finding that commercial lending institutions are developing innovative ways to respond to this sector of the economy, including working with nonprofit community-based organizations.

Section 4 would amend section 81-1297 of the Microenterprise Development Act to provide that it is no longer a purpose of the act to establish the Department of Economic Development as the coordinating office for the facilitation of microlending and microenterprise development, and to provide that it shall be a purpose of the act to create a mechanism to deliver surety bond support services to microenterprises and other private entities.

Section 5 would amend section 81-1298 of the Microenterprise Development Act to eliminate definitions of "commercial lending institution," "microloan delivery organization," "operating costs," "selection process," and "statewide microlending support organization."

Section 6 would amend section 81-1299 of the Microenterprise Development Act to eliminate its existing provisions and would insert new provisions to provide that the Department of Economic Development shall select a single private, nonprofit organization to carry out the functions of the Microenterprise Partnership Program, and to provide that the department, in selecting the organization, shall consider the organization's ability to deliver a statewide program and the organization's ability to ascertain that the matching funds requirement described in section 81-12,102 (section 7 of the bill) is not by grant recipients.

Section 7 would amend section 81-12,102 of the Microenterprise Development Act to eliminate its existing provisions and would insert new provisions to provide that it is the intent of the Legislature to appropriate funds to the Department of Economic Development to be awarded as a grant to the private, nonprofit organization selected to carry out the purposes of the Microenterprise Partnership Program. This section would provide that the department may receive funds from local governments or the federal government, private foundations, or other sources. This section would provide that the private, nonprofit organization shall ensure that a recipient of a grant provides matching funds of at least twenty-five percent of the grant funds. This section would provide that at least fifty percent of the grants shall be disbursed in microloans which shall not exceed thirty-five thousand dollars.

Section 8 would amend section 81-12,104 of the Microenterprise Development Act to eliminate provisions regarding the annual report for the Microenterprise Partnership Program.

#### MISCELLANEOUS

Section 9 would amend section 84-612 to eliminate provisions requiring transfers of funds from the Cash Reserve Fund to the Microenterprise Development Cash Fund on July 9, 2007 and on July 7, 2008.

Section 10 would provide for repealers of amendatory sections.

Section 11 would provide for outright repeal of the following sections of the Microenterprise Development Act: sections 81-12,100 (considerations for grants to Microloan delivery organization), 81-12,101 (use of grants to microloan delivery organization), 81-12,103 (department contracts with statewide microlending support organization), 81-12,105 (department rule and regulation authority), and 81-12,105.01 (cash fund).

### **LB 1068 (Hansen) Adopt the Rural Tourism Development Act**

#### **Left in Committee**

#### OVERVIEW

This bill would enact the Rural Tourism Development Act to be administered by the Rural Tourism Division of the Department of Economic Development, with the intent to assist small tourism businesses in Nebraska with loans to start and maintain agritourism or ecotourism businesses.

#### SUMMARY

The bill would provide, section by section, as follows:

Section 1 would enact a new section to provide for a named act: the Rural Tourism Development Act.

Section 2 would enact a new section to provide for definitions: (1) "agritourism" (travel to a tourist destination that combines traditional agricultural production and tourism); (2) "agritourism or ecotourism businesses" (includes outfitting, hunting, fishing, horseback riding, boating, canoeing, kayaking, farm and ranch tours and activities, camping, picnicking, hiking, bicycling, nature study, winter sports, and visiting, viewing, or enjoying historical, archaeological, scenic, or scientific sites); (3) "department;" (4) "ecotourism" (responsible travel to natural areas which conserves the environment and improves the welfare of the local people); (5) "program;" (6) "rural tourism;" and (7) "small tourism business" (an entity or individual that derives or anticipates deriving net income of not more than two million dollars from a rural tourism business).

Section 3 would enact a new section to provide for creation of the Rural Tourism Development Program to be administered by the Rural Tourism Division of the Department of Economic Development. This section would provide that the intent of the program is to assist small tourism businesses with loans to start and maintain an agritourism or ecotourism business.

Section 4 would enact a new section to provide that a small tourism business in a county with a population of not more than one hundred thousand residents may apply to the department for a rural tourism business loan of up to forty percent of the cost of the small tourism business up to a total cost for such business of five hundred thousand dollars. This section would further provide that a small tourism business loan shall be up to a five-year loan with an interest rate of zero percent.

Section 5 would enact a new section to provide for the creation of the Rural Tourism Development Fund. This section would provide that on July 1, 2010, and July 1, 2011, the State Treasurer shall transfer five hundred thousand dollars from the Local Civic, Cultural, and Convention Center Financing Fund to the Rural Tourism Development Fund. This section would further provide that it is the intent of the Legislature to appropriate five percent of the balance of the Rural Tourism Development Fund annually to the department for administrative costs in carrying out this act.

Section 6 would enact a new section to provide that the department shall submit to the Governor, the Clerk of the Legislature, and the Legislative Fiscal Analyst a report by December 1 of each odd-numbered year, documenting the loans approved in the preceding fiscal years.

Section 7 would enact a new section to provide remedies for the department for unpaid loans.

Section 8 would enact a new section to provide the department with rule and regulation authority to carry out this act.

Section 9 would provide for operative dates.

Section 10 would provide for the emergency clause (applicable to sections 5 and 10 of the bill).

**LB 1074 (Mello, Conrad) Provide for job training grants to film production companies**

**Left in Committee**

This bill would provide for economic development grants and expenditures for the promotion of media production in Nebraska. The bill would provide as follows:

Section 1 would amend section 81-1203 to provide that a film production company producing a media product in Nebraska, (1) for which an amount in excess of one million dollars will be spent on goods and services, and (2) which will employ Nebraska citizens at wages greater than the average prevailing wage, is eligible for job training grants.

Section 2 would amend section 81-1211 to provide that the Department of Economic Development shall make expenditures from the Tourist Promotion Fund to promote and develop the tourist potential of this state, "including films, television production, television commercials, and web-based or Internet-delivered content that will be filmed or developed in this state."

Section 3 would provide for repealers.

## TRADE NAMES

### **LB 690 (Langemeier) Change deadline provisions relating to trade name publication filings**

#### **Enacted**

#### **Effective July 15, 2010**

This bill amends sections 87-214 and 87-219 of the trade name statutes to provide that the registrant of a trade name must publish the trade name within "forty-five" days rather than "thirty" days from the filing in the office of the Secretary of State and shall file proof of publication with the Secretary of State and the county clerk within the "forty-five" days rather than "thirty" days.

The bill passed 47-0-2 on February 25, 2010 and was signed by the Governor on March 3, 2010.

## TRADE PRACTICES

### **LB 571 (Pahls, Lathrop) Adopt the Guaranteed Asset Protection Waiver Act**

#### **Speaker Priority Bill**

#### **Enacted**

#### **Effective July 15, 2010**

#### OVERVIEW

This bill enacts 7 new sections to be known as the Guaranteed Asset Protection Waiver Act to provide requirements and restrictions regarding guaranteed asset protection waivers, which are contractual agreements wherein a creditor agrees, for a separate charge, to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of a motor vehicle.

#### SUMMARY

The bill provides, section by section, as follows:

Section 1 enacts a new section to provide for a named act: the Guaranteed Asset Protection Waiver Act.

Section 2 enacts a new section to provide that: (1) the purpose of the act is to provide a framework within which guaranteed asset protection waivers are offered, sold, and provided in this state; (2) the act does not apply to an insurance policy or a debt cancellation or debt suspension contract; and (3) guaranteed asset protection waivers are not insurance and are exempt from the insurance laws of this state, and persons marketing or selling guaranteed asset protection waivers are exempt from this state's insurance licensing requirements.

Section 3 enacts a new section to define: "borrower;" "creditor" (the lender in a loan or credit transaction, the lessor in a lease transaction, a retail seller of motor vehicles, or an assignee of any of the foregoing); "finance agreement" (a loan, lease, or retail installment sales contract for the purchase or lease of a motor vehicle); "financial institution;" "free look period;" "guaranteed asset protection waiver" (a contractual agreement wherein a creditor or the creditor's designee agrees, for a separate charge, to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of a motor vehicle); "motor vehicle;" and "person."

Section 4 enacts a new section to provide that: (1) guaranteed asset protection waivers offered, sold, or provided to borrowers under the terms of the act are not insurance and are exempt from the insurance laws of the state, and persons marketing or selling guaranteed asset protection waivers that comply with the act are exempt from this state's insurance licensing requirements; (2) guaranteed asset protection waivers may be sold for

a single payment or may be offered with a monthly or periodic payment option; (3) any cost to the borrower shall be separately stated and is not to be considered a finance charge or interest; (4) the guaranteed asset protection waiver remains a part of the finance agreement upon assignment, sale, or transfer of the finance agreement by the creditor; (5) neither the extension of credit, the terms of credit, nor the terms of the motor vehicle sale or lease may be conditioned upon the purchase of a guaranteed asset protection waiver; and (6) persons marketing or selling guaranteed asset protection waivers shall not market such waivers as being insured under a contractual liability or other insurance policy issued by an insurer.

Section 5 enacts a new section to provide that guaranteed asset protection waivers shall disclose in writing and in clear, understandable language the items set forth in this section.

Section 6 enacts a new section to provide for cancellation of guaranteed asset protection waiver agreements and refunds.

Section 7 enacts a new section to provide that the creditor or the creditor's designee shall not offer a guaranteed asset protection waiver that contains terms that allow the creditor or creditor's designee to modify, unilaterally, the waiver, unless the modification is favorable to the borrower and is made without additional charge or the borrower is notified of the proposed modification and has the option to cancel the waiver without penalty.

Sections 8 to 11 amend sections 45-335 and 45-336 of the Nebraska Installment Sales Act and sections 45-1002 and 45-1024 of the Nebraska Installment Loan Act to allow the charge for the guaranteed asset protection waiver to be included in the amount financed.

Section 12 amends section 60-1411.02 of the motor vehicle industry licensing statutes to authorize the Nebraska Motor Vehicle Industry Licensing Board to sanction violations of the Guaranteed Asset Protection Waiver Act.

Section 13 provides repealers for the amendatory sections.

The bill passed 49-0-0 on March 26, 2010 and was signed by the Governor on April 1, 2010.

## **LB 720 (Avery) Provide requirements and restrictions for customer loyalty or incentive programs**

### **Left in Committee**

This bill would enact a new section to provide that if a retail business establishes a customer loyalty, bonus, or incentive program which provides the incentive in the form of a general-use prepaid card, the business shall offer the incentive in the form of cash or

a negotiable check, at the option of the customer. The bill would further provide that the check or general-use prepaid card shall not expire for at least one year after the date of issuance and that the amount of cash or the value of the check or general-use prepaid card shall not be decreased for administrative, shipping, or handling fees.

The bill would define a "general-use prepaid card" as a plastic card or other electronic payment device usable with multiple, unaffiliated sellers of goods or services.

The bill would provide the Attorney General with specific enforcement provisions.

## UNIFORM COMMERCIAL CODE – SECURED TRANSACTIONS

### **LB 751e (Pahls, Langemeier) Change provisions relating to the effect of errors and omissions in financing statements**

#### **Enacted**

#### **Effective March 4, 2010**

This bill removes recently enacted non-uniform provisions from a section of Article 9 (Secured Transactions) of the Uniform Commercial Code (UCC).

The bill amends UCC Section 9-506, which regards the effect of errors and omissions in a financing statement. This section was amended by the Nebraska Legislature in 2008 to provide that a financing statement with minor errors or omissions is not seriously misleading if a search of "the debtor's correct last name" in the records of the filing office would disclose the financing statement. UCC Section 9-506 otherwise provides, as a general matter, that a financing statement substantially satisfying the requirements of the code is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading. The 2008 amendments to this section were non-uniform and were not to have become applicable until September 2, 2009. This section was further amended by the Nebraska Legislature in 2009 to provide that the 2008 amendments would not become applicable until September 2, 2010. LB751 repeals the 2008 amendments before they can become applicable.

Other states have adopted various non-uniform amendments to their versions of this section regarding the debtor's last name on a financing statement. It is expected that the Uniform Law Commissioners will be considering uniform amendments regarding this and related matters for recommendation to all the states. LB751 returns Nebraska's UCC Section 9-506 to its original uniform text pending completion by the Uniform Law Commissioners of their work.

The bill passed 47-0-2 on February 25, 2010 with the emergency clause and was signed by the Governor on March 3, 2010.

NOTE: LR 424 (Pahls) calls for the Banking, Commerce and Insurance Committee to conduct an interim study to determine whether Nebraska should update its version of Uniform Commerce Code, Article 9, relating to secured transactions.

**BANKING, COMMERCE AND INSURANCE COMMITTEE  
2010 INTERIM STUDY RESOLUTIONS**

- LR334 (Cornett) Interim study to determine whether Nebraska's insurance laws should be amended to provide requirements relating to health benefit plan prescription drug coverage
- LR406 (Cornett) Interim study to determine whether Nebraska's insurance laws should be amended by adopting the Physician and Patient Prescription Protection Act
- LR413 (Langemeier) Interim study to determine whether the Real Property Appraiser Act should be amended to provide for regulation of appraisal management companies
- LR424 (Pahls) Interim study to examine whether Nebraska should update the Uniform Commercial Code, Article 9, relating to secured transactions
- LR438 (Pahls) Interim study of issues arising out of LB752 regarding the Nebraska Trust Company Act
- LR439 (Pahls) Interim study to review recent changes in federal law regarding health care insurance and to identify administrative and legislative responses which Nebraska will need to make
- LR483 (Pahls) Interim study to examine issues relating to solicitation of accident victims and motor vehicle insurance fraud
- LR503 (Conrad) Interim study to determine whether Nebraska should enact the Revised Uniform Unincorporated Nonprofit Association Act

REPORT ON THE PRIORTIZING  
OF INTERIM STUDY RESOLUTIONS  
Pursuant to Rule 4, Section 3(c)

COMMITTEE: Banking, Commerce and Insurance

DATE: April 12, 2010

The following resolutions were referred to the Committee on Banking, Commerce and Insurance. The committee has prioritized the resolutions in the following order:

<b><u>Resolution No.</u></b>	<b><u>Subject</u></b>
LR439	Review changes in federal law regarding health care insurance
LR413	Real Property Appraiser Act regulation of appraisal management companies
LR503	Enact Revised Uniform Unincorporated Nonprofit Association Act
LR483	Solicitation of accident victims and motor vehicle insurance fraud
LR334	Provide requirements relating to health benefit plan prescription drug coverage
LR406	Adoption of the Physician and Patient Prescription Protection Act
LR424	Update the Uniform Commercial Code, Article 9, relating to secured transactions
LR438	Issues arising out of LB752 regarding the Nebraska Trust Company Act